IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19953 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANILBHAI DEVCHANDBHAI PATEL - Petitioner(s)

Versus

THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 17/11/2005

ORAL JUDGMENT

1. Anilbhai Devchandbhai Patel-petitioner has filed this habeas corpus petitioner under Article 226 of the Constitution of India praying for quashing and setting aside the order of detention dated 12.09.2005

passed by detaining authority under the provisions of the Gujarat Prevention of Anti-social activities Act, 1985 (for short 'PASA Act') which is illegal null and void and also violative of Article 14, 19, 21 and 22 of the Constitution of India. The present petition was filed on 26.09.2005 and my learned brother Hon'ble Mr. Justice A.S. Dave issued RULE on 03.10.2005 which was made returnable after four weeks and that is why this matter has come up before this Court.

2. Heard, Mr. H.R. Prajapati, learned Advocate for the petitioner in this behalf who has invited my attention to the order of detention dated 12.09.2005 and grounds supplied therein. In the ground of detention, authority has mentioned solitary offence being registered as C.R. No.799 of 2005 punishable under Section 66(1)B, 65E,A, 81 and 116B of the Bombay Prohibition Act, at Katargam police station. In that case authority confiscated 576 bottles of country liquor valued at Rs.17,280/- and Rs.960/- in cash.

3. Learned Advocate for the petitioner has placed reliance on the judgment of apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City & Another reported in AIR 1989 SC 491 and as regards solitary offence he has relied upon the judgment of the apex Court in the case of Darpan Kumar Sharma alias Dharban Kumar Sharma Vs. State of Tamil Nadu and others reported in AIR 2003 SC 971. Learned Advocate for the petitioner also relied on Division Bench judgment of this Court in L.P.A. No.223 of 2000 (Coram: M.R. Calla & R.R. Tripathi,J.J.)decided on 22nd August, 2000 in the case of Ashok Makwana Vs. State of Gujarat. Learned Advocate for the petitioner has also placed reliance on another Division Bench judgment of this Court (Coram: Acting C.J., C.K. Thakkar and K.M. Mehta,J.)in the case of Ashokbhai Jivraj alias Jivabhai Solanki Vs. Police Commissioner, Surat and Others reported in 2000(1) GLH 393. He has also placed reliance on judgment of this Court (Coram: A.L. DAVE,J.)in the case of Jayanti Nenumel Ramnani Vs. Commissioner of Police Rajkot and Others reported

in 2002 (2) GLH 166. He has also relied on judgment of this Court in S.C.A. No.20420 of 2005 decided on 15.11.2005 (Coram: K.M. Mehta,J.)in the case of Rajubhai Prataphbhai Panpatil Vs. Commissioner of Police, Surat City.

4. Mr. Gohil, learned A.G.P. has appeared on behalf of respondent and has placed reliance on affidavit of Mr. Sudhir Sinha, Commissioner of Police, Surat city dated 21.10.2005. In the said affidavit it was stated that Commissioner of Police, Surat city has carefully scrutinized, examined and considered all those materials and has found the same to be sufficient for detaining the detenu. Thereafter, on the basis of the above materials, Commissioner of Police, Surat city formulated the grounds of detention and all those grounds are true, correct, clear and proper. It was further stated that in the present case, amongst the relevant materials, Commissioner of Police, Surat city has examined the documents relating to the one case registered against the detenu and from those materials, it is clear that the detenu falls within

the definition of 'Bootlegger' as defined u/s. 2(b) of the PASA Act. Therefore, on carefully scrutinizing, studying, examining and considering the materials placed before him including the papers pertaining to the above cases and after applying his mind to the facts of the case, Commissioner of Police, Surat city came to the conclusion, after subjectively satisfying himself that the detenu is dealing in illegal liquor business and he is disturbing the public order, public peace and public health and it is likely that continuance of his anti-social and bootlegging activities may cause grave or wide-spread danger to life property and public health. Therefore, after subjectively satisfying hat the anti-social and bootlegging activities of the detenu cannot be curbed or prevented immediately by resorting to less drastic remedy of taking action under the ordinary law, as a preventive measure, Commissioner of Police, Surat city has passed the order of detention against the detenu.

5. Mr. Gohil, learned A.G.P. has tried to support the order of detention and the grounds

supplied therein by the authority in this behalf.

6. I have heard learned Counsel for both the parties and after perusal of the record, I am of the view that the detaining authority has passed the order of detention without there being any cogent or credible material on record in this behalf. I have also considered factual and legal aspects emerging from the record of the petition and considered the rival submissions and the facts of the case and also in view of the decision of the apex Court in the case of Piyush Kantilal Mehta(Supra) and Division Bench judgment of this Court in the case of Ashok Makwana (Supra) and also recent judgment of this Court in the case of Rajubhai Pratapbhai Panpatil(Supra)the order of detention cannot be sustained and deserves to be quashed and set aside.

7. In the result, this petition is allowed and order of detention dated 12.09.2005 passed by Commissioner of Police, Surat City is hereby quashed and set aside. Anilbhai Devchandbhai Patel-detenu is ordered to be set at liberty forthwith if he is not

required in connection with any other case by the authority. Rule is made absolute to the aforesaid extent with no order as to costs. D.S. permitted.

(K.M.MEHTA,J.)

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